

1 MICHAEL D. ABRAHAM (SBN 125633)
mabraham@bzbm.com

2 STEPHEN C. STEINBERG (SBN 230656)
ssteinberg@bzbm.com

3 BARTKO ZANKEL BUNZEL & MILLER
A Professional Law Corporation
4 One Embarcadero Center, Suite 800
San Francisco, California 94111
5 Telephone: (415) 956-1900
Facsimile: (415) 956-1152

6 Attorneys for Defendants
7 SUTTER BAY MEDICAL FOUNDATION,
SUTTER BAY HOSPITALS (d.b.a. Alta Bates
8 Summit Medical Center), NEIL STOLLMAN,
ROD PERRY, and PHILIP RICH
9

10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

12 RALPH PETERSON,

13 Plaintiff,

14 v.

15 SUTTER BAY MEDICAL FOUNDATION;
SUTTER BAY HOSPITALS;
16 NEIL STOLLMAN, M.D.;
ROD PERRY, M.D.; PHILIP RICH, M.D.;
17 CATHY L. LOZANO (Board Investigator);
KRISTINA LAWSON (Board Member);
18 HOWARD KRAUSS, M.D. (Board Member);
RANDY HAWKINS, M.D. (Board Member);
19 RICHARD D. FANTOZZI, M.D. (Board Member);
HEDY CHANG (Former Board Member);
20 DEV GNANADEV, M.D. (Board Member);
RONALD LEWIS, M.D. (Board Member);
21 LAURIE ROSE LUBIANO (Board Member);
ASIF MAHMOOD, M.D. (Board Member);
22 RICHARD THORP, M.D. (Board Member);
23 FELIX YIP, M.D. (Board Member);
and DOES 1-10.

24
25 Defendants.

Case No. 3:21-cv-04908-WHO

**DECLARATION OF MICHAEL D.
ABRAHAM**

Judge: Honorable William H. Orrick
Trial Date: January 8, 2024

1 I, MICHAEL D. ABRAHAM, declare:

2 1. I am a shareholder with the law firm of Bartko, Zankel, Bunzel & Miller, counsel
3 of record for Defendants Sutter Bay Medical Foundation, Sutter Bay Hospitals; Neil Stollman,
4 M.D., Rod Perry, M.D. and Philip Rich, M.D. (collectively, “Defendants”), and am licensed to
5 practice before this honorable Court. If called upon as a witness, I could and would competently
6 testify to the facts stated herein based upon my own personal knowledge.

7 2. Because Plaintiff’s counsel Marie Mirch’s letter to the Court, dated May 3, 2023,
8 (ECF No. 125) ignores that she was sent a copy of a draft joint letter brief addressing the
9 depositions of third parties, Charlotte Burrows, Hillary Ronen and Glenn Melnick, prior to the
10 filing of Defendants’ letter brief (ECF No. 124), and because this calls into question my
11 certification that the Court’s meet and confer requirements were met, I am filing this declaration.

12 3. I, along with my colleague Stephen C. Steinberg, are counsel for Defendants.

13 4. On April 18, 2023, without any prior meeting and conferring, I received an email
14 from Ms. Mirch with notices and subpoenas for a deposition of Hillary Ronen to take place on
15 May 12, 2023, Charlotte Burrows to take place on May 19, 2023, and Glenn Melnick to take place
16 on May 19, 2023.

17 5. After Mr. Steinberg and I researched these deponents and determined that they are
18 third parties with no apparent relevant, personal factual knowledge as to any of the remaining
19 claims in the case, in accordance with the Court’s Standing Order concerning discovery disputes,
20 on April 25, 2023, Mr. Steinberg emailed Ms. Mirch, with a copy of the email sent to me, raising
21 this discovery dispute and requesting to schedule a videoconference to address the discovery
22 dispute on Monday, May 1, 2023. In response to Mr. Steinberg’s email, an automated out of
23 office message was received indicating that Mr. and Ms. Mirch were in trial Monday through
24 Thursday. Mr. Steinberg then sent a follow-up email to Ms. Mirch, with a copy to me, offering to
25 schedule the videoconference on Friday, April 28, 2023, to accommodate the trial schedule.

26 6. The videoconference took place on Friday, April 28, 2023, and Ms. Mirch
27 participated as counsel for Plaintiff. During this call, I, along with Mr. Steinberg, discussed with
28 Ms. Mirch that Defendants objected to these three depositions of third parties as irrelevant and

1 lacking in proportionality since they, if at all and at best, only related to already dismissed claims.
2 Because Plaintiff's counsel refused to cancel the three depositions, it was agreed that Defendant's
3 counsel would email a draft joint letter brief to Ms. Mirch on Monday, May 1, 2023. Ms. Mirch
4 was asked to provide Plaintiff's section on Tuesday, May 2, 2023. Ms. Mirch responded that,
5 because of the trial, Plaintiff's counsel likely would need a little more time and offered to provide
6 Plaintiff's section by no later than noon on Wednesday, May 3, 2023, which offer was accepted.

7 7. Consistent with the agreement made between counsel, Mr. Steinberg emailed a
8 draft joint letter brief to Ms. Mirch around noon on Monday, May 1, 2023. Attached hereto as
9 **Exhibit A** is a true and correct copy of the May 1, 2023 email with its attachment, the draft joint
10 letter brief, sent by Mr. Steinberg to Ms. Mirch and copying me. I know Exhibit A is a true and
11 correct copy of Mr. Steinberg's May 1, 2023 email and its attachment that was sent to Ms. Mirch
12 because I participated in the drafting thereof and, as a listed cc on the email, received a copy of the
13 sent email with its attachment.

14 8. On May 3, 2023 at 10:12 a.m., Mr. Steinberg sent a follow-up email to Ms. Mirch
15 asking if Plaintiff's counsel would be providing Plaintiff's section of the joint letter brief and also
16 stating that, if Plaintiff's section was not provided, we would file a letter brief solely on behalf of
17 Defendants, per the Court's Standing Order. A true and correct copy of an email string including
18 this May 3, 2023 email sent by Mr. Steinberg to Ms. Mirch, as well as all of the other emails
19 described above, is attached hereto as **Exhibit B**. I know Exhibit B is a true and correct copy as I
20 participated in the drafting of the emails and, as a listed cc, received copies of the sent emails.

21 9. When Plaintiff's counsel failed to provide Plaintiff's section by noon on May 3,
22 2023, and also failed to respond to the emails attached as Exhibits A and B, I still waited until the
23 end of the business day on May 3, 2023 to file Defendant's letter brief addressing the dispute over
24 the three depositions. (*See* ECF No. 124.) I take seriously the obligation to comply with the
25 Court's procedures and Orders. Furthermore, efforts have been made to work professionally with
26 Plaintiff's counsel, including in the emails attached hereto as Exhibits A and B.

27 I declare under penalty of perjury under the laws of the United States of America that the
28 foregoing is true and correct and that this declaration was executed on May 5, 2023, in the City

1 and County of San Francisco, State of California.
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



MICHAEL D. ABRAHAM

EXHIBIT A

Subject: FW: Peterson v. Sutter deposition notices
Attachments: 2385.038_Joint Letter Brief Re Discovery.docx

From: Stephen C. Steinberg <ssteinberg@BZBM.com>
Sent: Monday, May 1, 2023 12:02 PM
To: Marie Mirch <marie@mirchlaw.com>
Cc: Michael D. Abraham <MABRAHAM@BZBM.com>
Subject: RE: Peterson v. Sutter deposition notices

Marie,

As discussed below and on our call on Friday, attached is our draft letter brief to the Court. Please fill in your section and send it back to us by tomorrow if possible, or no later than Wednesday morning, so we can file it by that day as discussed on our call. We reserve the right to make changes or additions in response to statements made in Plaintiff's forthcoming section.

Also, I can now confirm Dr. Perry can do his deposition on Wednesday, May 31, at 10 am. Please send amended deposition notices for him and Dr. Stollman at your earliest convenience. Thanks.

Steve

Stephen C. Steinberg
Principal
BARTKO ZANKEL BUNZEL & MILLER
One Embarcadero Center, Suite 800
San Francisco, CA 94111
Phone: (415) 291-4523
Email: ssteinberg@bzbm.com
www.bzbm.com

From: Stephen C. Steinberg
Sent: Monday, May 1, 2023 10:41 AM
To: Marie Mirch <marie@mirchlaw.com>
Cc: Michael D. Abraham <MABRAHAM@BZBM.com>
Subject: RE: Petersn v. Sutter deposition notices

Good morning, Marie,

Thank you again for speaking with us on Friday. This email is to follow up on our discussion about deposition scheduling.

Regarding scheduling the depositions of our clients, I can now confirm Dr. Stollman on **Wednesday, May 31, at 2 pm**. Also, I am waiting for confirmation, but it appears Dr. Perry can do his deposition on **Wednesday, May 31, at 10 am**. This is the same timing you proposed in your deposition notices. Assuming this works for

you as discussed on Friday, please serve amended deposition notices to confirm. I am still checking with Dr. Rich on his availability, and hope to get back to you later today, but by this Wednesday at the latest.

Regarding scheduling the deposition of Dr. Peterson, our understanding was that you would speak with him and send us potential dates over the weekend, but we did not hear back. We know you are in trial today and for the next few days, so if we do not hear back, we will pick a date taking into account your trial schedule and serve a deposition notice, and we can meet and confer further if it does not work for you and/or Dr. Peterson.

Regarding the third party depositions about which we reached an impasse, as discussed, we will send you our draft letter brief to fill in your section later today.

Best regards,

Steve

Stephen C. Steinberg
Principal
BARTKO ZANKEL BUNZEL & MILLER
One Embarcadero Center, Suite 800
San Francisco, CA 94111
Phone: (415) 291-4523
Email: ssteinberg@bzbm.com
www.bzbm.com

From: Marie Mirch <marie@mirchlaw.com>
Sent: Friday, April 28, 2023 2:24 PM
To: Stephen C. Steinberg <ssteinberg@BZBM.com>
Subject: Re: Petersn v. Sutter deposition notices

—
Okay I'll be on. Sorry my internet and phone were down today

[Sent from Smallbiz Yahoo Mail for iPhone](#)

On Friday, April 28, 2023, 1:57 PM, Stephen C. Steinberg <ssteinberg@BZBM.com> wrote:

Marie, I'm going to go ahead and send out a Zoom invite for 2:30 pm.

From: Stephen C. Steinberg
Sent: Friday, April 28, 2023 1:12 PM
To: Marie Mirch <marie@mirchlaw.com>
Cc: Michael D. Abraham <MABRAHAM@BZBM.com>
Subject: RE: Petersn v. Sutter deposition notices

Marie, can we do it at 2:30 pm? We have something starting at 3 pm, which is why we proposed 12:30-2:30 p.m. below. If that does not work, how about 4 pm?

From: Marie Mirch <marie@mirchlaw.com>
Sent: Friday, April 28, 2023 1:04 PM
To: Stephen C. Steinberg <ssteinberg@BZBM.com>
Cc: Michael D. Abraham <MABRAHAM@BZBM.com>
Subject: Re: Petersn v. Sutter deposition notices

Does 3:00 pm work for you?

[Sent from Smallbiz Yahoo Mail for iPhone](#)

On Friday, April 28, 2023, 10:27 AM, Stephen C. Steinberg <ssteinberg@BZBM.com> wrote:

Hi Marie, please let me know when you can talk today and I'll circulate a zoom link.
Thanks.

Steve

Sent from my iPhone

From: Marie Mirch <marie@mirchlaw.com>
Date: April 26, 2023 at 7:15:17 PM PDT
To: "Stephen C. Steinberg" <ssteinberg@bzbm.com>
Subject: Re: Petersn v. Sutter deposition notices
Reply-To: Marie Mirch <marie@mirchlaw.com>

Yes, absent any unexpected circumstance I will make myself available for a call on Friday during the time frame you suggest. I should have a better understanding of my

schedule tomorrow after our trial session. I may n have had a chance to confer with Dr. Peterson yet, but I will over the weekend.

Thank you

Marie Mirch

Mirch Law Firm LLP

1180 Rosecrans Street

Suite 104-552

San Diego, CA 92106

(619) 501-6220

(619) 501-6980 fax

marie@mirchlaw.com

PLEASE NOTE NEW ADDRESS ABOVE

Privilege and Confidentiality Notice

The information contained in this e-mail is privileged and confidential information intended only for the named recipient. It may contain privileged and confidential matter. Further please be advised that (1) e-mail communication is not a secure method of communication, (2) any e-mail that is sent to you or by you may be copied, (3)e-mail may be improperly intercepted. If you want future communications to be sent in a different fashion, please notify me immediately.

If you have received this e-mail in error, please delete it immediately and notify the sender. We request that you do not disclose the contents to anyone. Thank you.

Absent a written agreement, We cannot accept service via email. If you email a document or message that requires our review/attention please send a hard copy to the address listed above to ensure receipt.

On Wednesday, April 26, 2023 at 04:11:05 PM PDT,
Stephen C. Steinberg <ssteinberg@bzbm.com> wrote:

Ms. Mirch,

I got your out of office message indicating you are in trial Monday thru Thursday, so as an alternative, we can talk this Friday, April 28, between 12:30-2:30 p.m., if that works for you? As part of our call, please also check with Dr. Peterson on his availability for deposition in May and June. Thank you.

Best regards,

Stephen C. Steinberg

Principal

BARTKO ZANKEL BUNZEL & MILLER

One Embarcadero Center, Suite 800

San Francisco, CA 94111

Phone: (415) 291-4523

Email: ssteinberg@bzbm.com

www.bzbm.com

From: Stephen C. Steinberg
Sent: Tuesday, April 25, 2023 10:23 PM
To: Marie Mirch <marie@mirchlaw.com>
Cc: Michael D. Abraham <MABRAHAM@BZBM.com>;
Caroline Pfahl <cpfahl@bzbm.com>; Glenda R.
Cayabyab <gcayabyab@BZBM.com>
Subject: RE: Petersn v. Sutter deposition notices

Ms. Mirch,

This email is to meet and confer concerning Plaintiff's deposition notices to our clients, Drs. Perry, Stollman, and Rich, and deposition subpoenas to third-parties, Hilary Ronan, Glen Melnick, and Charlotte Burrows.

Regarding the depositions of our clients, you failed to comply with Civil Local Rule 30, which requires that "before noticing a deposition of a party or witness affiliated with a party, the noticing party must confer about the scheduling of the deposition with opposing counsel." The noticed deposition dates—May 5 and 12—do not work for us and our clients. We were also surprised to see you notice depositions for those dates given your prior statements that you would be in trial through mid-May and therefore could not file an opposition to our motion for attorneys' fees in that same timeframe. In any case, we are discussing with our clients potential alternative dates later in the month of May or in June. Please let us know if you have any windows of unavailability that we should be aware of.

Regarding the depositions of third-parties, Hilary Ronan, Glen Melnick, and Charlotte Burrows, we object to these subpoenas and notices on the grounds that these witnesses at best relate to

Plaintiff's claims that have been dismissed, e.g., the antitrust claims, and/or as not proportional to the needs of the case. None of these witnesses have knowledge relevant to either of the two limited claims remaining in the case.

Pursuant to Judge Orrick's standing order, we request to meet and confer about the aforementioned issues, which we are required to do in person or by videoconference. We are available to do so **any time on Monday, May 1**. Please let us know what time works with your schedule and we will circulate a Zoom link. Thank you for your prompt attention to this matter.

Best regards,

Stephen C. Steinberg

Principal

BARTKO ZANKEL BUNZEL & MILLER

One Embarcadero Center, Suite 800

San Francisco, CA 94111

Phone: (415) 291-4523

Email: ssteinberg@bzbm.com

www.bzbm.com

From: Marie Mirch <marie@mirchlaw.com>
Sent: Tuesday, April 18, 2023 4:09 PM
To: Michael D. Abraham <MABRAHAM@BZBM.com>;
Stephen C. Steinberg <ssteinberg@BZBM.com>
Subject: Petersn v. Sutter deposition notices

Counsel,

Attached are notices of depositions. If any of these dates does not work for you or the

witness, let me know asap, and we will accommodate the best we can.

Hard copies coming via mail

Marie Mirch

Mirch Law Firm LLP

1180 Rosecrans Street

Suite 104-552

San Diego, CA 92106

(619) 501-6220

(619) 501-6980 fax

marie@mirchlaw.com

PLEASE NOTE NEW ADDRESS ABOVE

Privilege and Confidentiality Notice

The information contained in this e-mail is privileged and confidential information intended only for the named recipient. It may contain privileged and confidential matter. Further please be advised that (1) e-mail communication is not a secure method of communication, (2) any e-mail that is sent to you or by you may be copied, (3) e-mail may be improperly intercepted. If you want future communications to be sent in a different fashion, please notify me immediately.

If you have received this e-mail in error, please delete it immediately and notify the sender. We request that you do not disclose the contents to anyone. Thank you.

Absent a written agreement, We cannot accept service via email. If you email a document or message that requires our review/attention please send a hard copy to the address listed above to ensure receipt.



Michael D. Abraham
mabraham@bzbm.com

Our File: 2385.038

May __, 2023

VIA PACER E-FILING

The Honorable William H. Orrick
U.S.D.C. Northern District of California
450 Golden Gate Avenue
Courtroom 2, 17th Floor
San Francisco, CA 94102

Re: *Ralph Peterson v. Sutter Bay Medical Foundation, et al.*
Case No. 3:21-cv-04908-WHO

***Joint Letter Brief Re: Discovery Dispute - Submitted Pursuant to
Judge Orrick's Standing Order For Civil Cases***

Dear Judge Orrick:

Pursuant to the Court's Standing Order for Civil Cases, the respective counsel for the Parties submit this Joint Letter Brief concerning a present discovery dispute that requires the Court's assistance. The issue in dispute is whether the depositions of three third parties noticed and subpoenaed by Plaintiff's counsel should be precluded or go forward. The three deponents are: (1) Charlotte Burrows – Chair of the EEOC; (2) Hillary Ronen – a San Francisco Supervisor; and (3) Glenn Melnick – a USC professor who focuses on healthcare economics.

Meet and Confer Efforts Via Video Call

The respective counsel for the parties met and conferred via video conference call on Friday, April 28, 2023, and explained their respective positions, but were unable to reach agreement on whether the three depositions should proceed. The undersigned counsel, by their signatures, certify that they have met the Court's meet and confer requirement.

Defendants' Position

Plaintiff's federal antitrust claim, his federal Section 1983 discrimination and retaliation claims, as well as all of his claims under California state law, were dismissed or stricken without leave to amend on July 20, 2022. (Docket No. 102 at 20:1-13, 22:13-17 (dismissing the federal Section 1983 discrimination and retaliation claims, the federal antitrust claims, Unruh Act claims, and striking the remaining California state law claims without leave to amend).)

The Hon. William H. Orrick

May __, 2023

Page 2

Plaintiff's remaining claims are limited to:

(1) a Section 1983 civil rights claim for alleged violation of his First Amendment rights that asserts the peer review proceedings instituted in 2009 (which did not reach a conclusion due to Plaintiff's election to resign his hospital privileges) were purportedly instituted to stifle Plaintiff's patient advocacy and education; and

(2) a Section 1983 civil rights claim for alleged violation of his Due Process rights that asserts the 2009 peer review proceedings lacked sufficient due process.

Fed. R. Civ. P. 26(b)(1) limits the scope of discovery to nonprivileged information "that is relevant to any party's claim or defense," so long as it is "proportional to the needs of the case." As a result, the United States Supreme Court has held that it is proper to preclude discovery as to stricken claims where, as here, the discovery has no relevance to a remaining issue. *Oppenheimer Fund v. Sanders* 437 U.S. 340, 351 (1978).

The fact depositions at issue in this letter are not relevant to Plaintiff's two remaining claims. Charlotte Burrows is the current Chair of the EEOC, and does not have any factual knowledge relevant to whether the 2009 peer review proceedings concerning Plaintiff involved a purported violation of his Due Process rights or took place purportedly due to his exercise of his First Amendment rights (as opposed to because he failed to have adequate "call coverage" for his patients who were admitted to Alta Bates Summit Medical Center, in violation of the applicable By-Laws). Furthermore, and as noted above, Plaintiff's Section 1983 discrimination and retaliation claims have been dismissed.

Likewise, neither Hillary Ronen, a San Francisco Supervisor, nor Glenn Melnick, a USC professor who is a healthcare economist, appears to have any personal knowledge of factual information relevant to Plaintiff's remaining claims. Rather, from independent research, both Ronen and Melnick have been quoted criticizing Sutter for alleged antitrust violations. (See, e.g., <https://sfist.com/2020/12/14/sutter-health-price-gouging-expose-lands-sup-ronen-on-60-minutes/>; <https://www.courthousenews.com/economists-hopeful-about-outcome-of-antitrust-trial-against-northern-california-hospital-giant/>.) But as noted above, Plaintiff's antitrust claims were dismissed over nine months ago. Furthermore, the alleged antitrust violations that are discussed in the linked publications—purported all-or-nothing contracting and purported lack of price transparency—have nothing to do with Plaintiff's remaining claims.¹

During the meet and confer process, and in response to Defendants' counsel's objections based on relevance and lack of proportionality, Plaintiff's counsel responded that these witnesses appear to have knowledge of the government "investigation" of Sutter. But Hillary Ronen and Glenn Melnick had no known role in a governmental antitrust investigation of Sutter. Likewise, Charlotte Burrows had no known role in an EEOC investigation of Sutter. Even if they did have a role in a governmental investigation of Sutter, their knowledge would still be irrelevant since,

¹ The trial referenced in the linked article quoting Glenn Melnick involved civil litigation between private parties. Sutter prevailed at the referenced trial.

The Hon. William H. Orrick

May __, 2023

Page 3

as noted above, Plaintiff's antitrust claims, as well as his discrimination and retaliation claims, were dismissed.

The subject fact depositions are not proportional to the needs of the case since they are only potentially relevant to dismissed claims, if at all. The proposed fact discovery also does not relate to alleged kickbacks for steering of patients, which Plaintiff alleges he refused in 2009. (Docket No. 78 (SAC) at ¶ 170.) In the Parties' Joint Case Management Statement, Plaintiff stated he would try to take discovery concerning dismissed claims and then seek to amend to add them back into the case, and Defendants stated their objection thereto. (Docket No. 116 at 12:1-8 and 12:17-13:10.) Defendants' resources should not have to be expended on depositions of third parties with no personal knowledge relevant to Plaintiff's remaining claims.

For the foregoing separate reasons, Defendants respectfully request that the Court preclude the three depositions—of third parties, Charlotte Burrows, Hillary Ronen, and Glenn Melnick—from going forward.

Plaintiffs' Position

Very truly yours,

BARTKO · ZANKEL · BUNZEL · MILLER
A Professional Law Corporation

Michael D. Abraham
Stephen C. Steinberg
Counsel for Defendants
Sutter Bay Medical Foundation,
Sutter Bay Hospitals, Neil Stollman,
Rod Perry, and Philip Rich

MIRCH LAW FIRM, LLP

Kevin J. Mirch
Marie C. Mirch
Counsel for Plaintiff
Ralph Peterson

The Hon. William H. Orrick

May __, 2023

Page 4

MDA

EXHIBIT B

Subject: FW: Peterson v. Sutter deposition notices

From: Stephen C. Steinberg <ssteinberg@BZBM.com>
Sent: Wednesday, May 3, 2023 10:12 AM
To: Marie Mirch <marie@mirchlaw.com>
Cc: Michael D. Abraham <MABRAHAM@BZBM.com>
Subject: RE: Peterson v. Sutter deposition notices

Marie,

I am following up on whether you will be getting us your part of the joint letter to the court this morning, as discussed on our call last week. Please let us know. If we cannot get your section, we will have to file our own letter as provided by Judge Orrick's standing order. Thanks.

Steve

Stephen C. Steinberg
Principal
BARTKO ZANKEL BUNZEL & MILLER
One Embarcadero Center, Suite 800
San Francisco, CA 94111
Phone: (415) 291-4523
Email: ssteinberg@bzbm.com
www.bzbm.com

From: Stephen C. Steinberg
Sent: Monday, May 1, 2023 12:02 PM
To: 'Marie Mirch' <marie@mirchlaw.com>
Cc: Michael D. Abraham <MABRAHAM@BZBM.com>
Subject: RE: Peterson v. Sutter deposition notices

Marie,

As discussed below and on our call on Friday, attached is our draft letter brief to the Court. Please fill in your section and send it back to us by tomorrow if possible, or no later than Wednesday morning, so we can file it by that day as discussed on our call. We reserve the right to make changes or additions in response to statements made in Plaintiff's forthcoming section.

Also, I can now confirm Dr. Perry can do his deposition on Wednesday, May 31, at 10 am. Please send amended deposition notices for him and Dr. Stollman at your earliest convenience. Thanks.

Steve

Stephen C. Steinberg
Principal
BARTKO ZANKEL BUNZEL & MILLER
One Embarcadero Center, Suite 800
San Francisco, CA 94111
Phone: (415) 291-4523
Email: ssteinberg@bzbm.com
www.bzbm.com

From: Stephen C. Steinberg
Sent: Monday, May 1, 2023 10:41 AM
To: Marie Mirch <marie@mirchlaw.com>
Cc: Michael D. Abraham <MABRAHAM@BZBM.com>
Subject: RE: Petersn v. Sutter deposition notices

Good morning, Marie,

Thank you again for speaking with us on Friday. This email is to follow up on our discussion about deposition scheduling.

Regarding scheduling the depositions of our clients, I can now confirm Dr. Stollman on **Wednesday, May 31, at 2 pm**. Also, I am waiting for confirmation, but it appears Dr. Perry can do his deposition on **Wednesday, May 31, at 10 am**. This is the same timing you proposed in your deposition notices. Assuming this works for you as discussed on Friday, please serve amended deposition notices to confirm. I am still checking with Dr. Rich on his availability, and hope to get back to you later today, but by this Wednesday at the latest.

Regarding scheduling the deposition of Dr. Peterson, our understanding was that you would speak with him and send us potential dates over the weekend, but we did not hear back. We know you are in trial today and for the next few days, so if we do not hear back, we will pick a date taking into account your trial schedule and serve a deposition notice, and we can meet and confer further if it does not work for you and/or Dr. Peterson.

Regarding the third party depositions about which we reached an impasse, as discussed, we will send you our draft letter brief to fill in your section later today.

Best regards,

Steve

Stephen C. Steinberg
Principal
BARTKO ZANKEL BUNZEL & MILLER
One Embarcadero Center, Suite 800
San Francisco, CA 94111
Phone: (415) 291-4523
Email: ssteinberg@bzbm.com
www.bzbm.com

From: Marie Mirch <marie@mirchlaw.com>
Sent: Friday, April 28, 2023 2:24 PM
To: Stephen C. Steinberg <ssteinberg@BZBM.com>
Subject: Re: Petersn v. Sutter deposition notices

Okay I'll be on. Sorry my internet and phone were down today

[Sent from Smallbiz Yahoo Mail for iPhone](#)

On Friday, April 28, 2023, 1:57 PM, Stephen C. Steinberg <ssteinberg@BZBM.com> wrote:

Marie, I'm going to go ahead and send out a Zoom invite for 2:30 pm.

From: Stephen C. Steinberg
Sent: Friday, April 28, 2023 1:12 PM
To: Marie Mirch <marie@mirchlaw.com>
Cc: Michael D. Abraham <MABRAHAM@BZBM.com>
Subject: RE: Petersn v. Sutter deposition notices

Marie, can we do it at 2:30 pm? We have something starting at 3 pm, which is why we proposed 12:30-2:30 p.m. below. If that does not work, how about 4 pm?

From: Marie Mirch <marie@mirchlaw.com>
Sent: Friday, April 28, 2023 1:04 PM
To: Stephen C. Steinberg <ssteinberg@BZBM.com>
Cc: Michael D. Abraham <MABRAHAM@BZBM.com>
Subject: Re: Petersn v. Sutter deposition notices

Does 3:00 pm work for you?

[Sent from Smallbiz Yahoo Mail for iPhone](#)

On Friday, April 28, 2023, 10:27 AM, Stephen C. Steinberg <ssteinberg@BZBM.com> wrote:

Hi Marie, please let me know when you can talk today and I'll circulate a zoom link.
Thanks.

Steve

Sent from my iPhone

From: Marie Mirch <marie@mirchlaw.com>
Date: April 26, 2023 at 7:15:17 PM PDT
To: "Stephen C. Steinberg" <ssteinberg@bzbm.com>
Subject: Re: Petersn v. Sutter deposition notices
Reply-To: Marie Mirch <marie@mirchlaw.com>

Yes, absent any unexpected circumstance I will make myself available for a call on Friday during the time frame you suggest. I should have a better understanding of my schedule tomorrow after our trial session. I may n have had a chance to confer with Dr. Peterson yet, but I will over the weekend.

Thank you

Marie Mirch
Mirch Law Firm LLP
1180 Rosecrans Street
Suite 104-552
San Diego, CA 92106
(619) 501-6220
(619) 501-6980 fax

marie@mirchlaw.com

PLEASE NOTE NEW ADDRESS ABOVE

Privilege and Confidentiality Notice

The information contained in this e-mail is privileged and confidential information intended only for the named recipient. It may contain privileged and confidential matter. Further please be advised that (1) e-mail communication is not a secure method of communication, (2) any e-mail that is sent to you or by you may be copied, (3) e-mail may be improperly intercepted. If you want future communications to be sent in a different fashion, please notify me immediately.

If you have received this e-mail in error, please delete it immediately and notify the sender. We request that you do not disclose the contents to anyone. Thank you.

Absent a written agreement, We cannot accept service via email. If you email a document or message that requires our review/attention please send a hard copy to the address listed above to ensure receipt.

On Wednesday, April 26, 2023 at 04:11:05 PM PDT,
Stephen C. Steinberg <ssteinberg@bzbm.com> wrote:

Ms. Mirch,

I got your out of office message indicating you are in trial Monday thru Thursday, so as an alternative, we can talk this Friday, April 28, between 12:30-2:30 p.m., if that works for you? As part of our call, please also check with Dr. Peterson on his availability for deposition in May and June. Thank you.

Best regards,

Stephen C. Steinberg

Principal

BARTKO ZANKEL BUNZEL & MILLER

One Embarcadero Center, Suite 800

San Francisco, CA 94111

Phone: (415) 291-4523

Email: ssteinberg@bzbm.com

www.bzbm.com

From: Stephen C. Steinberg
Sent: Tuesday, April 25, 2023 10:23 PM
To: Marie Mirch <marie@mirchlaw.com>
Cc: Michael D. Abraham <MABRAHAM@BZBM.com>;
Caroline Pfahl <cpfahl@bzbm.com>; Glenda R.
Cayabyab <gcayabyab@BZBM.com>
Subject: RE: Petersn v. Sutter deposition notices

Ms. Mirch,

This email is to meet and confer concerning Plaintiff's deposition notices to our clients, Drs. Perry, Stollman, and Rich, and deposition

subpoenas to third-parties, Hilary Ronan, Glen Melnick, and Charlotte Burrows.

Regarding the depositions of our clients, you failed to comply with Civil Local Rule 30, which requires that “before noticing a deposition of a party or witness affiliated with a party, the noticing party must confer about the scheduling of the deposition with opposing counsel.” The noticed deposition dates—May 5 and 12—do not work for us and our clients. We were also surprised to see you notice depositions for those dates given your prior statements that you would be in trial through mid-May and therefore could not file an opposition to our motion for attorneys’ fees in that same timeframe. In any case, we are discussing with our clients potential alternative dates later in the month of May or in June. Please let us know if you have any windows of unavailability that we should be aware of.

Regarding the depositions of third-parties, Hilary Ronan, Glen Melnick, and Charlotte Burrows, we object to these subpoenas and notices on the grounds that these witnesses at best relate to Plaintiff’s claims that have been dismissed, e.g., the antitrust claims, and/or as not proportional to the needs of the case. None of these witnesses have knowledge relevant to either of the two limited claims remaining in the case.

Pursuant to Judge Orrick’s standing order, we request to meet and confer about the aforementioned issues, which we are required to do in person or by videoconference. We are available to do so **any time on Monday, May 1**. Please let us know what time works with your schedule and we will circulate a Zoom link. Thank you for your prompt attention to this matter.

Best regards,

Stephen C. Steinberg

Principal

BARTKO ZANKEL BUNZEL & MILLER

One Embarcadero Center, Suite 800

San Francisco, CA 94111

Phone: (415) 291-4523

Email: ssteinberg@bzbm.com

www.bzbm.com

From: Marie Mirch <marie@mirchlaw.com>
Sent: Tuesday, April 18, 2023 4:09 PM
To: Michael D. Abraham <MABRAHAM@BZBM.com>;
Stephen C. Steinberg <ssteinberg@BZBM.com>
Subject: Petersn v. Sutter deposition notices

Counsel,

Attached are notices of depositions. If any of these dates does not work for you or the witness, let me know asap, and we will accommodate the best we can.

Hard copies coming via mail

Marie Mirch

Mirch Law Firm LLP

1180 Rosecrans Street

Suite 104-552

San Diego, CA 92106

(619) 501-6220

(619) 501-6980 fax

marie@mirchlaw.com

PLEASE NOTE NEW ADDRESS ABOVE

Privilege and Confidentiality Notice

The information contained in this e-mail is privileged and confidential information intended only for the named recipient. It may contain privileged and confidential matter. Further please be advised that (1) e-mail communication is not a secure method of communication, (2) any e-mail that is sent to you or by you may be copied, (3) e-mail may be improperly intercepted. If you want future communications to be sent in a different fashion, please notify me immediately.

If you have received this e-mail in error, please delete it immediately and notify the sender. We request that you do not disclose the contents to anyone. Thank you.

Absent a written agreement, We cannot accept service via email. If you email a document or message that requires our review/attention please send a hard copy to the address listed above to ensure receipt.